



ASEAN Intellectual Property Rights (IPR) ENFORCEMENT ACTION PLAN



FRAMEWORK

With the forthcoming integration of the Member States of the Association of South East Asian Nations (ASEAN), the enforcement of intellectual property rights within the ASEAN Economic Community (AEC) has become a primary concern for the Member States, their trading partners, and private enterprises. The ASEAN Economic Community Blueprint (AEC Blueprint) emphasizes the principle that Intellectual Property (IP) can influence both the volume and quality of external trade and investment, and the transfers of advanced, proprietary technologies, as well as being a major determinant of local value added and external competitiveness. In light of these principles, the ASEAN Member States (AMSs) adopted work plans to develop a culture of learning and innovation, supported by a friendlier IP profile to businesses, investors, inventors and creators in ASEAN. The work plans also sought to foster better public awareness, coordination and networking, predictability, capacity building, and contribution of IP industries to competitiveness and development.

Among the actions outlined in the AEC Blueprint for the implementation of these work plans was to “[s]ustain consultations and information exchanges among the national enforcement agencies in IPR protection”. This ASEAN IPR Enforcement Action Plan proceeds from the principles set out in the AEC Blueprint, and seeks to foster the exchange of information and best practices among AMSs. The Action Plan also draws from the principles embodied in the ASEAN Framework Agreement on Intellectual Property Cooperation, as adopted in Bangkok, Thailand on 15 December 1995. Under the Framework Agreement, the AMSs agreed to undertake cooperative activities, which shall include, *inter alia*, activities to enhance intellectual property enforcement and protection. Such activities include the: (a) effective protection and enforcement of intellectual property rights; (b) cross border measures cooperation; and (c) networking of judicial authorities and intellectual property enforcement agencies.

A HOLISTIC APPROACH

Within the context of the principles embodied in the agreements adopted by ASEAN, the approach of the ASEAN IPR Enforcement Action Plan is four-fold:

- I. From the point of view of **CONSUMERS**, to raise awareness about IP rights and the dangers posed by counterfeit and pirated goods, aimed at fostering a social consciousness of rejecting counterfeit goods and sub-standard products;
- II. From the point of view of **IPR OWNERS**, to establish collaborative mechanisms with public officials and agencies towards effective apprehension, case build-up, prosecution, and prevention of the production, distribution, and transportation of pirated and counterfeit goods;
- III. From the point of view of **PUBLIC AUTHORITIES**, to strengthen the capacities of officials and government agencies to effectively investigate, prosecute and adjudicate cases of IPR violations;

- IV. From the point of view of **ASEAN AS A REGION**, to establish institutional mechanisms and linkages for collaboration and information exchange among public authorities of each AMS, geared towards developing regional platforms for strategically curbing counterfeiting and piracy in the ASEAN, and to share best practices and benchmarks on effective enforcement policies and procedures.

Cognizant of the different levels of development and capacities of each AMS, the programs and activities under the present Action Plan are intended to provide a holistic, strategic, and concerted effort to addressing the menace of counterfeiting and piracy in the region.

As a holistic plan, it targets the whole spectrum of stakeholders and relevant institutions that are actors in the enforcement of IPRs in the region. As a strategic plan, it considers the limited availability of resources and prioritizes areas where there may be maximum impact and positive, deliverable results. It also seeks to strategically address emerging issues and future developments in IP crimes. As a plan that reflects the concerted efforts of all AMSs, it aims to provide linkages and collaborative mechanisms for increased cooperation between Member States in order to curb counterfeiting and piracy in the region through a unified front.

INITIATIVE DELIVERABLES

- I. INFORMATION AWARENESS ACTIVITIES (INCLUDING DEVELOPMENT OF INFORMATION MATERIALS) ON ENFORCEMENT ARE UNDERTAKEN IN THE REGION, AND PRIVATE SECTOR INVOLVEMENT IN ANTI-PIRACY AND INFORMATION AWARENESS CAMPAIGNS AT THE REGIONAL LEVEL IS INTENSIFIED.**

Proposed Activities:

1. Partner with strategic industries to develop focused information campaigns (film, music, software, etc.) to build respect for IP.
2. Undertake IP information campaign and respect for IP rights.
3. Hold rotating seminars in the AMSs on pertinent IP information for relevant stakeholders.

Raising and promoting public awareness of intellectual property rights at all levels is one of the initiatives undertaken in the ASEAN IPR Action Plan 2011-2015. Building on the milestones achieved under such initiative, information materials and promotional tool kits shall be produced and made available for wide distribution in the region. The promotional campaigns and materials may be included as a component of the ASEAN IP Promotion Strategy, under Initiative 18 of the ASEAN IPR Action Plan 2011-2015, and shall include information on the dangers and risks posed by counterfeiting and piracy.

A measure worth exploring is the installation of public information materials in points of entry and exit, such as airports and ports in each AMS, warning of the dangers and risk of penalties when transporting counterfeit and pirated goods. Another measure is installing the same posters or warning signs in notorious markets and establishments. It is targeted that the common posters be installed by January 1, 2015 in time for ASEAN integration in 2015.

Reference materials for public authorities may also be produced, with up-to-date information on best practices in the enforcement of IPRs. These reference materials may include publications on landmark decisions in each AMS regarding IP cases, best practices in IPR investigation and case build-up, and information on the latest tools and technologies to aid in IPR investigation.

These information awareness campaigns may be organized in partnership with the major export and import enterprises or industries in the region, as well as those of the ASEAN trade partners. Cooperation with IP practitioners and brand owners is an integral component of the enforcement action plan, as they may be best-suited to share new technologies adopted for genuine products, as well as forensic evidence that may be used in the prosecution of IPR cases.

Private organizations, such as the Business Action to Stop Counterfeiting and Piracy (BASCAP), other IP advocacy groups, associations of IP practitioners in ASEAN, and Chambers of Commerce may also be invited to participate and co-organize such promotional activities.

II. PUBLICLY AVAILABLE STATISTICAL INFORMATION RELATING TO IP ENFORCEMENT, INCLUDING THE STATUS OF IP CASES IN THE JUDICIARY, IS COLLATED THROUGH A CENTRALIZED COORDINATING UNIT AND IS ACCESSIBLE ONLINE IN THE REGION

Proposed Activities:

1. Assign a focal point or set up a coordinating unit in each AMS, in a position to do so, where applicable/possible that will gather and collate data and forward these data to the country champion.
2. Country champion to prepare a draft template for comments. The template may contain information such as:
 - Number of seizures;
 - Number of operations conducted by relevant agencies;
 - Nature/type of operations/activities conducted by relevant agencies;
 - Number of cases filed with all judicial/quasi-judicial bodies, and decisions rendered; and
 - *SOURCES OF SHIPMENT/IMPORTED GOODS.*
3. The AWGIPC would determine the nature of data to be gathered.
4. Making data available to the respective IP Offices upon request and upload the data into the ASEAN Portal, once operational, on a regular basis.

Information exchange and access to statistical information from each AMS is the backbone of the collaborative mechanism between the enforcement agencies in the region. Focal points from agencies performing IPR enforcement functions have been identified, which will compose the network of ASEAN IPR Enforcement Experts.

The ASEAN IPR Enforcement Experts, consisting of the enforcement focal points of each AMS, may meet periodically in order to share updates and new developments in IPR enforcement. The group may also discuss and adopt measures to deepen collaboration between the AMSs towards improving the enforcement of IPRs in the region.

A survey on the available statistical information in each AMS has also been circulated, which will serve as the basis for identifying common enforcement information that may be shared. Once completed, an information template will be established, with the respective focal points providing periodic updates on the requested information. Cooperative activities may also be provided for AMSs which require assistance in generating certain statistics or information and making them subsequently available.

To determine the common sources or origins of pirated and counterfeit goods in the region, national customs agencies will also be requested to generate reports on the common sources of intercepted infringing goods. The possibility of utilizing information in the ASEAN Single Window, and coordinating with the ASEAN Working Group on Customs may also be further explored.

To facilitate access to the updated statistical information, a central enforcement operations hub or coordinating unit shall be established, which shall be responsible for gathering, collating, and disseminating the data from and to the respective Focal Points. Such data, and other information that are not confidential in nature, may be published and made available to the public through the ASEAN IP Portal.

III. REDUCED MOVEMENTS OF PIRATED AND COUNTERFEIT GOODS INTO AND BETWEEN AMSs IS DOCUMENTED.

Proposed Activities:

1. Hold regional seminars and workshops for prosecutors, judges, customs and enforcement officers on the following, topics:
 - Product identification;
 - Best practices on enforcement;
 - Movement of pirated and counterfeit goods; and
 - Updates in IP laws.
2. Establish linkages with international bodies and agencies involved with IP enforcement.

The documentation of reduced movements of pirated and counterfeit goods is a deliverable that has its unique challenges. As previously stated, the information generated

by one AMS may not be available in others. Each AMS also has its own customs recordal procedures and regulations which must be taken into consideration. Documenting and monitoring the movement of goods within the region, more so pirated and counterfeit goods, would also entail investing in technologies that may not be accessible to all AMSs. One mechanism of monitoring may not be applicable to all AMSs.

For these reasons, it is proposed that a study on the modalities and mechanisms for documenting and monitoring the cross-border movement of counterfeit and pirated goods within the ASEAN region be undertaken by an enforcement expert, to be chosen by the AMSs. The enforcement expert may embark on missions to each AMS in order to analyze customs and enforcement procedures, generate findings, and provide recommendations on how monitoring and documentation may be undertaken, considering the present IPR enforcement framework and customs system of each AMS. The objective of the study would be to establish a mechanism for monitoring the movement of pirated and counterfeit goods in ASEAN, and constantly updating the same through a common platform by which reduced movements may be documented. Such documentation may be used as reference by national enforcement agencies to make tactical decisions in the campaign against IP violations.

Cooperation with dialogue partners may also be enhanced and expanded. Linkages with international bodies and agencies, such as the EU IP Observatory, the United States Trade Representative (USTR), INTERPOL, EUROPOL, ASEANAPOL, and the customs agencies of the major trading partners of AMSs, shall also be established.

IV. NATIONAL INTERNAL GUIDELINES FOR ENFORCEMENT CONSISTENT WITH THE CIVIL, CRIMINAL, AND ADMINISTRATIVE STRUCTURES OF AMSs ARE DRAWN UP BASED ON BEST PRACTICES IDENTIFIED THROUGH INFORMATION SHARING AMONG NATIONAL AGENCIES IN AMSs THAT ARE TASKED WITH IP ENFORCEMENT.

Proposed Activities:

- 1. Establish close coordination with AMSs administrative and judicial agencies involved in enforcement.**
- 2. Hold regional workshop among enforcement officers to discuss existing internal guidelines for enforcement.**

In order to identify best practices in IPR enforcement, and subsequently craft national internal guidelines for enforcement, an ASEAN Enforcement Expert may be engaged in order to conduct an in-depth study of the present enforcement frameworks in each AMS. In consultation with the focal points of each AMS, the Enforcement Expert may generate his/her findings and provide recommendations, which may be made available to the other AMSs.

Assistance of Dialogue Partners, particularly on studies that have already been conducted by Enforcement Experts, may be used to determine if further studies or analysis of already

collected information are still required. Previous studies conducted should be made available to all AMSs.

All existing national internal guidelines for enforcement shall also be published, when possible, in the ASEAN IP Portal. This would be a helpful reference for IPR owners and other stakeholders with regard to IPR enforcement in the AMSs.

V. WORKSHOPS AND SYMPOSIA ON ENFORCEMENT ISSUES AND DEVELOPMENTS IN IPR PROTECTION ARE HELD, AND STRONGER LINKAGES BETWEEN THE NATIONAL IP OFFICE AND THE JUDICIARY IN EACH AMS TO EXPEDITE THE DISPOSITION OF IP CASES AND OTHER GOVERNMENT AGENCIES TASKED WITH ENFORCEMENT OF IP RIGHTS ARE ESTABLISHED.

Proposed Activities:

1. Hold regional workshops and seminars on IPR enforcement issues and developments (e.g., border control, prosecution, enforcement, among others).

The AMSs, through the ASEAN Working Group on IP Cooperation (AWGIPC), shall continue to cooperate with dialogue partners to organize capacity-building seminars, workshops, and consultative meetings for various stakeholders and public authorities involved in IPR enforcement. However, the scope and coverage of such activities should be tailored to the specific functions of categories of public authorities, such as prosecutors, judges, customs, and enforcement officers.

Since resources for such activities entail only a limited number of participants, a system of “training trainers” may be adopted, wherein participants are encouraged to pass on knowledge to their colleagues. Conducting such seminars and workshops should thus focus on enabling and empowering the participants to diffuse knowledge gained from the activity. This includes the provision of reference materials and information tools that may be used by the participants after the activity.

Moreover, to facilitate the speedy and quality disposition of IP cases, judicial and administrative decisions resolving IPR cases may be made available through a database of IP decisions that may be published in the ASEAN IP Portal. A compilation of the decisions may also be made available through the publication of reference materials that may be distributed among judges and adjudicators during regional workshops, fora, and symposia. Assistance may also be provided for the translation into English of landmark decisions that are promulgated in the national language.

VI. DEVELOP A COORDINATION MECHANISM TO ENHANCE ENFORCEMENT OPERATIONS.

Proposed Activities:

1. Hold regular meetings between enforcement focal points of each AMS.

Among the primary objectives of the present Action Plan is to identify patterns of production, and shipment or distribution, of counterfeit and pirated goods in the region. At the end of this exercise, it is intended that AMSs are provided with sufficient information and data to strategically target counterfeiting and piracy *modus operandi* on a regional level.

To achieve this objective, the first step is to collate accurate data and information from each AMS, under the second deliverable. When the monitoring mechanism to document the movement of pirated and counterfeit goods in the region is already in place, as intended under the third deliverable, such documented information would also serve as basis for crafting the enforcement operational plan. Critical to the drafting of the operational plan is the coordination between the enforcement focal points of each AMS, in order to cooperate on the appropriate strategy to be undertaken in the operational plan. With this in mind, it is proposed that regular meetings be held between the respective focal points.

CONCLUSION

The ASEAN IPR Enforcement Action Plan is intended to enhance existing programs and initiatives on IP education and awareness; expand capability-building for the relevant institutions and groups; improve border control measures; establish mechanisms to ensure the speedy and quality disposition of IPR cases; strengthen institutional partnerships in the international and regional level; explore the reconfiguration of enforcement tools and mechanisms to keep pace with advancements in technology; and establish platforms for strengthened coordination among the public authorities in the AMSs in order to curb counterfeiting and piracy in the region.

While the Action Plan aims to achieve the principles and objectives of the over-arching cooperative framework between AMSs on intellectual property rights, it calls for a unified and holistic approach to enforcement that would include all stakeholders and not only public institutions. Enforcement agencies zealously implement strategic actions against pirates and counterfeiters, and their efforts need to be supported by all those who have a stake in the fight against IPR violations.

Most importantly, the Action Plan takes full consideration of the different levels of development and capacities of each ASEAN Member State when it comes to IPR enforcement. This diversity may be addressed by cooperation and collaborative mechanisms, not only between AMSs, but also together with dialogue partners and international institutions. In the final analysis, the Action Plan aims to empower each AMS to effectively address and undertake measures to curb counterfeiting and piracy within its borders, which also positively impacts the presence of counterfeiting and piracy in the entire region.